IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4648 OF 2006

Shri.Ramakant R.Bhosale .. Petitioner.
Versus
Shrikant Rajaram Bhosale & Ors. .. Respondents.

Mr.G.N.Salunke for petitioner.
Mr.Sanjay C.Prabhu h/f. N.V. Bandiwadekar for respondent Nos.6 & 7.

CORAM : R.M. SAVANT, J.
DATE : 11th June, 2007.

P.C.

1. Rule. By consent of parties made returnable forthwith and heard.

2. This petition filed under Article 227 of the Constitution of India, impugns the order dated 19th April, 2006 passed by the 6th Ad-hoc Addl. Dist. Judge, Kolhapur. By the said order, the application filed by the petitioner being Misc.Civil Application No.110 of 2004 for condonation of delay came to be rejected.

3. Brief facts of the case which are

necessary to be cited are stated thus : -

. The petitioner is the original plaintiff in R.C.S.No.94 of 1994 filed by him for partition and possession in respect of the ancestral land and immovable properties against his brothers.

. The respondent Nos.6 & 7 to the petition claim to be the petitioner’s wife and son. The petitioner has seriously disputed that respondent No.7 is his son and that respondent No.6 is his wife and there are proceedings pending between the respondent Nos.6 & 7 and the petitioner.

. It appears that an application filed by the respondent Nos.6 & 7 to be joined as party defendants was allowed by

the Trial Court vide its order dated 5th March, 1997. The respondent No.7 thereafter filed an application Exh.116D for transposing him as plaintiff.

. It is the case of the petitioner that he was unaware of the said application, an order came to be passed on 6th June, 2000 allowing the said application for transposing the respondent No.7 as plaintiff. The petitioner was unaware of the said order.

. It appears that the respondent No.7 as plaintiff laid evidence in the absence of the petitioner and a decree behind the back of the petitioner came to be passed on 10th July, 2003 in the suit instituted by the petitioner.

. After collecting the copies of

the documents and orders passed therein, the petitioner filed Misc.Civil Appeal on 12th April, 2004 against the said decree dated 10th July, 2003. Since the appeal was belated by 247 days, the petitioner moved an application for condonation of delay being Misc.Civil Appln.No.110 of 2004. The petitioner laid evidence in support of the said application. The said application came to be rejected by the order which is impugned in the present petition.

4. I have heard the learned counsel for respective parties.

5. It is the case of the petitioner that the petitioner was totally unaware of transposition of the respondent No.7 as plaintiff. The petitioner was also not aware of the suit being decreed on 10th July, 2003. The petitioner only

became aware of the said suit decreed sometime in November, 2003 when he was going through some other proceedings.

6. The learned counsel for petitioner submits that the respondent No.7 has been transposed as a plaintiff behind the back of the petitioner when the respondent No.7 had no connection whatsoever with the petitioner. On the other hand, it is contended by the learned counsel for the contesting respondents 6 & 7 that the petitioner being legally trained ought to have known the law and should have been diligent in prosecuting the remedies. The learned counsel further submits that the discretion exercised by the Appellate Court does not need any interference under Article 227 of the Constitution of India.

7. It is significant to note that respondent Nos.6 & 7 were original joined as defendants and

thereafter respondent No.7 was transposed as a plaintiff, which according to the petitioner was behind his back. The said suit also came to be decreed and the petitioner became aware of the same only in November, 2003. The fact that the petitioner has filed an appeal against the decree passed in suit when he was the plaintiff, shows the prejudice which has been caused to the petitioner on account of the respondent No.7 being transposed as plaintiff. In my view, the petitioner therefore should be allowed to agitate his grievance in respect of the said decree. The respondent No.7 being joined as a plaintiff would be a beneficiary of the said decree.

8. It is trite that a highly technical approach whilst dealing with an application for condonation of delay should be eschewed. The Appellate Court was in error in not accepting the explanation offered by the petitioner in support of his case of sufficient cause. In my view,

liberal approach which advances the case of substantial justice should be adopted. The petitioner should be given a chance to agitate his case on merits. In that view of the matter, the impugned order dated 19th April, 2006 will have to be set aside and Misc.Civil Appln.No.110 of 2004 marked as Exh.116D would have to be allowed.

9. In my view, the interest of justice would also be served if the petitioner is directed to pay costs of Rs.3,000/- to the respondent Nos.6 & 7 within three weeks from today. The appeal to be numbered only after the petitioner produces his evidence of having paid the said costs to the respondent Nos.6 & 7.

10. Rule is accordingly made absolute in the above terms with no order as to costs.

11. Parties to act upon an authenticated copy

of this order.

(R.M. SAVANT, J.)